TYP-04 Bringing Land Under the TLA

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1 Overview

Land which was alienated from the Crown before 1 July 1875 may be brought under the operation of the Transfer of Land Act 1893 (TLA) by the application of a person entitled to do so, upon payment of the fees prescribed. The entitlement of a person may arise from a chain of conveyances from the original grantee to the applicant or by the possession of the land by the applicant against the original grantee or a combination of both.

2 Right to Apply

The right to apply arises:

- where a person or corporation can establish the ownership of land by documentary title (in such cases there will be no requirement to satisfy the limitation periods under the Limitation Act 1935)

or

- where a person or corporation has been in possession of land for the required length of time under the Limitation Act 1935. This period is 12 years where the true owner can be proved to have been under no legal disability at the time possession commenced and 30 years where it cannot be proved that the true owner was not under a legal disability at the time possession commenced. A legal disability may be defined as infancy, idiocy, lunacy or unsoundness of mind

or

- where a person or corporation has been in possession of land for the required length of time under the Limitation Act 2005 (see Landgate policy and procedure guide POS-01 Adverse)
Possession).

Conveyancers should consider the effect of s.5(b) of the Limitation Act 1935 on the point of commencement of adverse possession in cases where the beneficiary of a registered proprietor (who is first dispossessed then later dies) gains a right of action for recovery of possession. The declaration of any person making an application where such circumstances apply should, in the applicant’s declaration, negate the effect of the death.

3 How to Apply

It is recommended that a blank instrument **Blank Instrument Form** be used to prepare the application in the form suggested by the Second Schedule to the Act. A modified version of the form is set out below.

It should be noted that the form incorporates a declaration and only those witnesses set out in the Second Schedule may witness the signature of the applicant. Where a corporation is the applicant, the application must be drawn in the name of the corporation and the declaration should be made by a responsible officer of the corporation. The Officer should then sign the application before one of the prescribed witnesses and have the corporation affix its Seal in the usual manner.

4 Form of Application

4.1 Form for Personal Application

WESTERN AUSTRALIA

TRANSFER OF LAND ACT 1893 (2nd Schedule)

Application to bring land under the operation of the Transfer to Land Act 1893.

To the Registrar of Titles.

I (insert Name and Address) hereby apply to have the land hereinafter described brought under the operation of the Transfer of Land Act 1893.

and I declare:

That I am the owner of an estate in fee simple in possession (or of an estate of freehold in possession for my life or otherwise as the case may require) in All that land being (describe the land) (if the land is not a fully surveyed lot or location show the area using the words which land contains x hectares or square metres) as is described in the document numbered ........ in the Schedule hereto.

That such land including all buildings and other improvements thereon is of the value of (number of dollars in words) dollars and no more.

That there are no documents or evidences of title affecting such land in my possession or under my control other than those included in the Schedule hereto.

That I am not aware of any mortgage or encumbrance or lease affecting the said land or that any other person has any estate or interest therein at law or in equity in possession remainder reversion or expectancy (if there be any add “other than as follows” and set them out).

That the said land is occupied (if unoccupied prefix “un” to occupied) (if occupied add by whom
and state the name and address of the occupant and the nature of the occupancy).

That the names and addresses so far as known to me of the occupants of all lands contiguous to the said land are as follows:

(Here list the contiguous Lots and their Occupants).

That the names and addresses so far as known to me of the owners of all lands contiguous to the said land are as follows:

(Here list the contiguous Lots and their Owners).

Dated this day of Two Thousand and Made and subscribed at ) (Signature of Applicant)
in the presence of ) (Signature of Witness)

Qualification of Witness

Schedule of Documents referred to

(Here list the documents referred to above produced with the application)

The applicant, if within the State, to sign before:

- the Registrar of Titles or an Assistant Registrar of Titles;
- a Notary Public;
- Justice of the Peace;
- Commissioner for taking Affidavits in the Supreme Court of Western Australia; or
- Legal Practitioner.

If out of the State, the applicant should sign before a

- Notary Public;
- Justice of the Peace; or
- a Commissioner for taking Affidavits in the Supreme Court of Western Australia.

4.2 Form for Application by a Corporation

WESTERN AUSTRALIA

TRANSFER OF LAND ACT 1893 (2nd Schedule)

Application to bring land under the operation of the Transfer to Land Act 1893.

To the Registrar of Titles.

(insert Name, A.C.N. and Address of Corporation) (hereinafter called the “Company”) hereby applies to have the land hereinafter described brought under the operation of the Transfer of
Land Act 1893.

and I (Name of Director or Corporation official, Address and status in company) declare:

I am authorised to make this statement, and I have had access to all the records of the Company to enable me to make it.

That the Company is the owner of an estate in fee simple in possession (or otherwise as the case may require) in All that land being (describe the land) (if the land is not a fully surveyed lot or location show the area using the words “which land contains x hectares or square metres) as is described in the document numbered ....... in the Schedule hereto.

That such land including all buildings and other improvements thereon is of the value of (number of dollars in words) dollars and no more.

That there are no documents or evidences of title affecting such land in my possession or under my control or in the Company’s possession or control other than those included in the Schedule hereto.

That I am not aware of any mortgage or encumbrance or lease affecting the said land or that any other person has any estate or interest therein at law or in equity in possession remainder reversion or expectancy (if there be any add “other than as follows” and set them out).

That the said land is occupied (if unoccupied prefix “un” to occupied) (if occupied add by whom and state the name and address of the occupant and the nature of the occupancy).

That the names and addresses so far as known to me of the occupants of all lands contiguous to the said land are as follows:

(Here list the contiguous Lots and their Occupants).

That the names and addresses so far as known to me of the owners of all lands contiguous to the said land are as follows:

(Here list the contiguous Lots and their Owners).

Dated this day of Two Thousand and...

Made and subscribed at... (Signature of Director or Corporate Official)

in the presence of...

(Signature of Witness)

Qualification of Witness

The Common Seal of (Name of Company)...

A.C.N. 123 456 789 was hereto...

affixed in the presence of:...

(Signature of Director)

Director

(Signature of Director/Secretary)

Director/Secretary

Schedule of Documents referred to...

(Here list the documents referred to above produced with the application).
5 Who may apply

The persons who may apply are set out in s.20 of the TLA. The applicant may be the owner by documentary title or he may have had possession for a sufficient length of time to oust the true owner.

The following points should be noted:

- all the persons entitled to apply must apply together. The owner of an undivided share may not bring that share alone under the operation of the Act

- a life tenant may not apply unless the person entitled to the estate in remainder joins in the application

- where the applicant’s land is mortgaged the application must have the formal endorsed consent of the mortgagee (or evidence of the repayment of the loan and non-availability of the mortgagee to sign a memorandum of satisfaction. (See also Landgate policy and procedure guide MTG-04, section 5: Discharge - Where the Mortgage Money has Been Paid and the Mortgagee is Dead or Absent from the State or Cannot Be Found)

and

- where a mortgagee is the applicant he or she must be exercising his or her power to sell and must direct that the title be created and registered in the name of the purchaser.

6 Proving Documentary Title

All deeds comprising the chain of title must be produced. All deeds and other documents comprising the chain of title should be listed in the order of their dates of execution or issue in the schedule of documents set out in the application.

Where any of the deeds or other documents are lost or are outside the control of the applicant, the applicant should:

- declare by separate declaration the circumstances of their loss or who has control of the deeds.

- provide photocopies of lost or missing documents from searches made at the Deeds Registry annexed to the statutory declaration.

If the application is granted, all the deeds produced are retained by Landgate, except where only part of the land in the deed is being dealt with. In that case the deed is suitably endorsed and returned to the applicant.

7 Survey Requirements

A correct description of the land, the subject of the application, is prepared by the Inspector of Plans and Surveys. The Inspector considers whether there is sufficient survey information relative to the land and makes a recommendation to the Commissioner as to whether or not a survey should be required. A survey, if required, must be carried out by a private registered surveyor and a Deposited Plan of survey lodged at Landgate.
8 Examination of Application

The application is submitted to the Commissioner, who may make requisitions if not satisfied with the evidence produced. When the Commissioner is satisfied that the application may be granted, notice of intention to grant the application is published in the Government Gazette and in a newspaper circulating in the City of Perth or in the neighbourhood of the land.

A copy of the advertisement is sent by mail to encumbrancers of the subject land, and the owners and occupiers of contiguous land. The period of advertising may be not less than two weeks nor more than twelve months. If, within the advertising period, no caveat against the application is lodged, a title for the land is prepared, which is later issued to the person entitled to receive it.

Where the application being advertised is an application by possession, a notice in the form of the Third Schedule to the TLA must be posted on the land, in a position directed by the Commissioner, for a period of three weeks during the advertising period. The notice or sign board to be approximately 1 metre x 600 mm in size, with lettering or text in proportion, erected 2 metres above ground level.

The Commissioner will direct that the notice is to be erected in a position where it is clearly visible, and readable, by persons going past the property. Proof of posting such notice must be made in the form of a statutory declaration and a copy of the text of the notice produced as an exhibit to the declaration (s.24 of the TLA).

9 Caveat against Application

Any person claiming an estate or interest in the land may lodge a caveat against the application under s.30. The subject is fully treated in Landgate policy and procedure guide CAV-03, section 5: Caveat against Applications to Bring Land under the Operation of the TLA (Section 30). It is important to note that unless the caveator takes Court proceedings to establish the claim and notifies the Registrar accordingly within one month of lodging the caveat, the caveat lapses under s.32.

10 Land brought under the TLA by operation of other statutes

10.1 By Taking

Land, not under the operation of the Act, when taken for a public work under Part 9 of the LAA is brought under the operation of the Act by the lodging of a Taking (Ministerial) Order.

A Crown land title (CLT) for the land may be created and registered in the name of the State of Western Australia. The CLT may subsequently be disposed of or granted to a Crown Instrumentality or Local Government for whom the land is taken.

10.2 By Acquisition by the Commonwealth

Land, not under the operation of the Act, and in some cases not alienated from the Crown, when acquired by the Commonwealth under the Lands Acquisition Act 1989 is brought under the
operation of the TLA by publication of a Notice of Acquisition in the Commonwealth Gazette. On the application of the Commonwealth together with a copy of the Notice of Acquisition, a certificate of title in the name of the Commonwealth of Australia is created and registered.

It should be noted that land acquired by the Commonwealth under the above-mentioned Act is brought under the operation of the TLA by virtue of s.4 of the Real Property (Commonwealth Titles) Act 1925 (No 3 of 1925) (WA).